

**OMB Number:** 1505–0024.

**Type of Review:** Revision of a currently approved collection.

**Title:** Treasury International Capital (TIC) Form CQ–1 “Report of Financial Liabilities to, and Financial Claims on, Foreign Residents” and Form CQ–2 “Report of Commercial Liabilities to, and Commercial Claims on, Unaffiliated Foreign-Residents”.

**Abstract:** Forms CQ–1 and CQ–2 are required by law to collect timely information on international portfolio capital movements, including data on financial and commercial liabilities to, and claims on, unaffiliated foreigners and certain affiliated foreigners held by non-banking enterprises in the U.S. This information is necessary in the computation of the U.S. balance of payments accounts and the U.S. international investment position, and in the formulation of U.S. international financial and monetary policies.

**Affected Public:** Private Sector: Businesses or other for-profits.

**Estimated Total Annual Burden Hours:** 5,616.

**OMB Number:** 1505–0149.

**Type of Review:** Revision of a currently approved collection.

**Title:** 31 CFR Part 128, Reporting of International Capital and Foreign Currency Transactions and Positions.

**Abstract:** Title 31 CFR Part 128 establishes general guidelines for reporting on U.S. claims on, and liabilities to foreigners; on transactions in securities with foreigners; and on monetary reserve of the U.S. It also establishes guidelines for reporting on the foreign currency of U.S. persons. It includes a recordkeeping requirement in section 128.5.

**Affected Public:** Private Sector: Businesses or other for-profits.

**Estimated Total Annual Burden Hours:** 5,683.

**Dawn D. Wolfgang,**

*Treasury PRA Clearance Officer.*

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## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### Federal Reserve System

### Federal Deposit Insurance Corporation

#### Agency Information Collection

#### Activities: Submission for OMB Review; Joint Comment Request

**AGENCIES:** Office of the Comptroller of the Currency (OCC), Treasury; Board of

Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

**SUMMARY:** In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. chapter 35), the OCC, the Board, and the FDIC (the “agencies”) may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. On June 17, 2011, OMB approved the agencies’ emergency clearance requests to implement assessment-related reporting revisions to the Consolidated Reports of Condition and Income (Call Report) for banks, the Thrift Financial Report (TFR) for savings associations, the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002), and the Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank (FFIEC 002S), all of which currently are approved collections of information, effective as of the June 30, 2011, report date. OMB’s emergency approval of the assessment-related reporting revisions extends through the December 31, 2011, report date. (As separately approved by OMB, December 31, 2011, is also the final report date as of which the TFR will be collected; savings associations will begin to file the Call Report as of the March 31, 2012, report date (76 FR 39986)).

Because of the limited approval period associated with OMB’s emergency clearance, the agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), requested public comment for 60 days on July 27, 2011, on the assessment-related reporting revisions to which the emergency approval pertained (76 FR 44987). After considering the comments received on these revisions, the transition guidance for the reporting of subprime and leveraged loans and securities by large and highly complex institutions that was adopted by the agencies in connection with their emergency clearance request to OMB has been extended to April 1, 2012. Furthermore, the FDIC has decided to review the subprime and leveraged loan definitions in its February 2011 final rule on assessments (76 FR 10672) to determine whether changes to these definitions could alleviate concerns expressed by

bankers without sacrificing accuracy in risk differentiation for deposit insurance pricing purposes. The instructions for reporting subprime and leveraged loans and securities for assessment purposes in the agencies’ regulatory reports will be conformed to any revised definitions of these terms in the FDIC’s assessment regulations that may result from the FDIC’s review process, including any necessary rulemaking. In addition, the agencies have made certain other modifications to the assessment-related reporting revisions covered by OMB’s emergency approval in response to comments received.

**DATES:** Comments must be submitted on or before January 11, 2012.

**ADDRESSES:** Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

**OCC:** You should direct all written comments to: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, *Attention: 1557–0081*, 250 E Street SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov*. You may personally inspect and photocopy comments at the OCC, 250 E Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

**Board:** You may submit comments, which should refer to “Consolidated Reports of Condition and Income (FFIEC 031 and 041)” or “Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002) and Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank (FFIEC 002S),” by any of the following methods:

- **Agency Web Site:** <http://www.federalreserve.gov>. Follow the instructions for submitting comments at: <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Email:** [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov).

Include reporting form number in the subject line of the message.

- *Fax:* (202) 452–3819 or (202) 452–3102.

- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at [www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm](http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm) as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets NW.) between 9 a.m. and 5 p.m. on weekdays.

**FDIC:** You may submit comments, which should refer to "Consolidated Reports of Condition and Income, 3064–0052," by any of the following methods:

- *Agency Web Site:* <http://www.fdic.gov/regulations/laws/federal/propose.html>. Follow the instructions for submitting comments on the FDIC Web site.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Email:* [comments@FDIC.gov](mailto:comments@FDIC.gov). Include "Consolidated Reports of Condition and Income, 3064–0052" in the subject line of the message.

- *Mail:* Gary A. Kuiper, (202) 898–3877, Counsel, Attn: Comments, Room F–1086, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

**Public Inspection:** All comments received will be posted without change to <http://www.fdic.gov/regulations/laws/federal/propose.html> including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room E–1002, 3501 Fairfax Drive, Arlington, VA 22226, between 9 a.m. and 5 p.m. on business days.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503, or by fax to (202) 395–6974.

**FOR FURTHER INFORMATION CONTACT:** For further information about the revisions discussed in this notice, please contact any of the agency clearance officers whose names appear below. In addition, copies of the Call Report, FFIEC 002, and FFIEC 002S forms can be obtained at the FFIEC's Web site ([http://www.ffiec.gov/ffiec\\_report\\_forms.htm](http://www.ffiec.gov/ffiec_report_forms.htm)).<sup>1</sup>

**OCC:** Ira Mills and Mary Gottlieb, OCC Clearance Officers, (202) 874–6055 and (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

**Board:** Cynthia Ayouch, Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

**FDIC:** Gary A. Kuiper, Counsel, (202) 898–3877, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:** The agencies are proposing to revise and extend for three years the Call Report, the FFIEC 002, and the FFIEC 002S, which currently are approved collections of information.<sup>2</sup><sup>3</sup>

*1. Report Title:* Consolidated Reports of Condition and Income (Call Report).

*Form Number:* Call Report: FFIEC 031 (for banks with domestic and foreign offices) and FFIEC 041 (for banks with domestic offices only).

*Frequency of Response:* Quarterly.

*Affected Public:* Business or other for-profit.

<sup>1</sup> Copies of the TFR, the collection of which will be discontinued after the filing of the reports for December 31, 2011, can be obtained at <http://www.ots.treas.gov/?p=ThriftFinancialReports>.

<sup>2</sup> The assessment-related changes to the Call Report and the FFIEC 002/002S that are the subject of this notice were approved by OMB on an emergency clearance basis and took effect June 30, 2011. OMB's emergency approval for these reports expires December 31, 2011. OMB's emergency approval also applies to the TFR, the collection of which will be discontinued after the reports for December 31, 2011, are filed. As separately approved by OMB, savings associations currently filing the TFR will convert to filing the Call Report beginning as of the March 31, 2012, report date (76 FR 39981, July 7, 2011).

<sup>3</sup> The agencies have also proposed to implement other revisions to the Call Report in 2012 (76 FR 72035, November 21, 2011). The new data items are proposed to be added to the Call Report as of the June 30, 2012, report date, except for two proposed revisions that would take effect March 31, 2012, in connection with the initial filing of Call Reports by savings associations. Proposed revisions to certain Call Report instructions would take effect March 31, 2012. In addition, the Board, on behalf of the agencies, has proposed certain revisions to the FFIEC 002 report effective June 30, 2012 (76 FR 72410, November 23, 2011).

## OCC

*OMB Number:* 1557–0081.

*Estimated Number of Respondents:* 2,035 (1,399 national banks and 636 federal savings associations).

*Estimated Time per Response:* *National banks:* 53.97 burden hours per quarter to file. *Federal savings associations:* 54.48 burden hours per quarter to file and 188 burden hours for the first year to convert systems and conduct training.

*Estimated Total Annual Burden:* *National banks:* 302,016 burden hours to file. *Federal savings associations:* 138,597 burden hours to file plus 119,568 burden hours for the first year to convert systems and conduct training. *Total:* 560,181 burden hours.

## Board

*OMB Number:* 7100–0036.

*Estimated Number of Respondents:* 826 state member banks.

*Estimated Time per Response:* 55.48 burden hours per quarter to file.

*Estimated Total Annual Burden:* 183,306 burden hours.

## FDIC

*OMB Number:* 3064–0052.

*Estimated Number of Respondents:* 4,747 (4,687 insured state nonmember banks and 60 state savings associations).

*Estimated Time per Response:* *State nonmember banks:* 40.47 burden hours per quarter to file. *State savings associations:* 40.47 burden hours per quarter to file and 188 burden hours for the first year to convert systems and conduct training.

*Estimated Total Annual Burden:* *State nonmember banks:* 758,732 burden hours to file. *State savings associations:* 9,713 burden hours to file plus 11,280 burden hours for the first year to convert systems and conduct training. *Total:* 779,725 burden hours.

The estimated times per response shown above for the Call Report represent the estimated ongoing reporting burden associated with the preparation of this report after institutions make the necessary recordkeeping and systems changes to enable them to generate the data required to be reported in the assessment-related data items that are the subject of this proposal. The estimated time per response is an average that varies by agency because of differences in the composition of the institutions under each agency's supervision (e.g., size distribution of institutions, types of activities in which they are engaged, and existence of foreign offices). These factors determine the specific Call Report data items in

which an individual institution will have data it must report. The average ongoing reporting burden for the Call Report (including the additional revisions proposed for implementation in 2012 referred to in footnote 3) is estimated to range from 17 to 715 hours per quarter, depending on an individual institution's circumstances.

**2. Report Titles:** Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks; Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank.

**Form Numbers:** FFIEC 002; FFIEC 002S.

## Board

**OMB Number:** 7100-0032.

**Frequency of Response:** Quarterly.

**Affected Public:** U.S. branches and agencies of foreign banks.

**Estimated Number of Respondents:** FFIEC 002—236; FFIEC 002S—57.

**Estimated Time per Response:** FFIEC 002—25.43 hours; FFIEC 002S—6 hours.

**Estimated Total Annual Burden:** FFIEC 002—24,006 hours; FFIEC 002S—1,368 hours.

As previously stated with respect to the Call Report, the burden estimates shown above are for the quarterly filings of the Call Report and the FFIEC 002/002S reports. The initial burden arising from implementing recordkeeping and systems changes to enable insured depository institutions to report the applicable assessment-related data items that have been added to these regulatory reports will vary significantly. For the vast majority of the nearly 7,600 insured depository institutions, including the smallest institutions, this initial burden will be nominal because only three of the new data items will be relevant to them and the amounts to be reported can be carried over from amounts reported elsewhere in the report.

At the other end of the spectrum, many of the new data items are applicable only to about 110 large and highly complex institutions (as defined in the FDIC's assessment regulations). To achieve consistency in reporting across this group of institutions, the instructions for these new data items, which are drawn directly from definitions contained in the FDIC's assessment regulations (as amended in February 2011), are prescriptive. Transition guidance has been provided for the two categories of higher-risk assets (subprime and leveraged loans) for which large and highly complex institutions have indicated that their data systems do not currently enable

them to identify individual assets meeting the FDIC's definitions that will be used for assessment purposes only. The transition guidance provides time for large and highly complex institutions to revise their data systems to support the identification and reporting of assets in these two categories on a going-forward basis. The guidance also permits these institutions to use existing internal methodologies developed for supervisory purposes to identify existing assets (and, in general, assets acquired during the transition period, which currently extends until April 1, 2012) that would be reportable in these higher-risk asset categories on an ongoing basis.

Before the agencies submitted emergency clearance requests to OMB for approval of the assessment-related reporting revisions that are the subject of this notice, the agencies had published an initial PRA notice on March 16, 2011, requesting comment on these revisions (76 FR 14460). Comments submitted in response to the agencies' initial PRA notice that addressed the initial burden that large and highly complex institutions would incur to identify assets meeting the definitions of subprime and leveraged loans in the FDIC's assessment regulations were written in the context of applying these definitions to all existing loans. The transition guidance created for these loans is intended to mitigate the initial data capture and systems burden that institutions would otherwise incur. Thus, the initial burden associated with implementing the recordkeeping and systems changes necessary to identify assets reportable in these two higher-risk asset categories will be significant for the approximately 110 large and highly complex institutions, but the agencies are currently unable to estimate the amount of this initial burden. Large and highly complex institutions will also experience additional initial burden in connection with implementing systems changes to support their ability to report the other new assessment-related items applicable to such institutions. However, given their focus on subprime and leveraged loans, respondents to the agencies' initial PRA notice offered limited comments about the burden of the other new items for large and highly complex institutions.

## General Description of Reports

These information collections are mandatory: 12 U.S.C. 161 (for national banks), 12 U.S.C. 324 (for state member banks), 12 U.S.C. 1817 (for insured state nonmember commercial and savings banks), 12 U.S.C. 1464 (for savings

associations), and 12 U.S.C. 3105(c)(2), 1817(a), and 3102(b) (for U.S. branches and agencies of foreign banks). Except for selected data items, including several of the data items for large and highly complex institutions that are part of this proposal, the Call Report and the FFIEC 002 are not given confidential treatment. The FFIEC 002S is given confidential treatment [5 U.S.C. 552(b)(4)].

## Abstracts

**Call Report:** Institutions submit Call Report data to the agencies each quarter for the agencies' use in monitoring the condition, performance, and risk profile of individual institutions and the industry as a whole. Call Report data provide the most current statistical data available for evaluating institutions' corporate applications, identifying areas of focus for both on-site and off-site examinations, and monetary and other public policy purposes. The agencies use Call Report data in evaluating interstate merger and acquisition applications to determine, as required by law, whether the resulting institution would control more than ten percent of the total amount of deposits of insured depository institutions in the United States. Call Report data also are used to calculate all institutions' deposit insurance and Financing Corporation assessments, and assessment fees for national banks and federal savings associations.

**FFIEC 002 and FFIEC 002S:** On a quarterly basis, all U.S. branches and agencies of foreign banks are required to file the FFIEC 002, which is a detailed report of condition with a variety of supporting schedules. This information is used to fulfill the supervisory and regulatory requirements of the International Banking Act of 1978. The data also are used to augment the bank credit, loan, and deposit information needed for monetary policy and other public policy purposes. The FFIEC 002S is a supplement to the FFIEC 002 that collects information on assets and liabilities of any non-U.S. branch that is managed or controlled by a U.S. branch or agency of the foreign bank. Managed or controlled means that a majority of the responsibility for business decisions (including, but not limited to, decisions with regard to lending or asset management or funding or liability management) or the responsibility for recordkeeping in respect of assets or liabilities for that foreign branch resides at the U.S. branch or agency. A separate FFIEC 002S must be completed for each managed or controlled non-U.S. branch. The FFIEC 002S must be filed quarterly along with the U.S. branch or agency's

FFIEC 002. The data from both reports are used for: (1) Monitoring deposit and credit transactions of U.S. residents; (2) monitoring the impact of policy changes; (3) analyzing structural issues concerning foreign bank activity in U.S. markets; (4) understanding flows of banking funds and indebtedness of developing countries in connection with data collected by the International Monetary Fund and the Bank for International Settlements that are used in economic analysis; and (5) assisting in the supervision of U.S. offices of foreign banks. The Federal Reserve System collects and processes these reports on behalf of the OCC, the Board, and the FDIC.

*Type of Review:* Revision and extension of currently approved collections of information.

## Current Actions

### I. Background

Section 331(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) (Pub. L. 111-203, July 21, 2010) required the FDIC to amend its regulations to redefine the assessment base used for calculating deposit insurance assessments as average consolidated total assets minus average tangible equity. Under prior law, the assessment base has been defined as domestic deposits minus certain allowable exclusions, such as pass-through reserve balances. In general, the intent of Congress in changing the assessment base was to shift a greater percentage of overall total assessments away from community banks and toward the largest institutions, which rely less on domestic deposits for their funding than do smaller institutions.

In May 2010, prior to the enactment of the Dodd-Frank Act, the FDIC published a Notice of Proposed Rulemaking (NPR) to revise the assessment system applicable to large insured depository institutions.<sup>4</sup> The proposed amendments to the FDIC's assessment regulations (12 CFR part 327) were designed to better differentiate large institutions by taking a more forward-looking view of risk and better take into account the losses that the FDIC will incur if an institution fails. The comment period for the May 2010 NPR ended July 2, 2010, and most commenters requested that the FDIC delay the implementation of the rulemaking until the effects of the then

pending Dodd-Frank legislation were known.

On November 9, 2010, the FDIC Board approved the publication of two NPRs, one that proposed to redefine the assessment base as prescribed by the Dodd-Frank Act<sup>5</sup> and another that proposed revisions to the large institution assessment system while also factoring in the proposed redefinition of the assessment base as well as comments received on the May 2010 NPR.<sup>6</sup> After revising the proposals where appropriate in response to the comments received on the two November 2010 NPRs, the FDIC Board adopted a final rule on February 7, 2011, amending the FDIC's assessment regulations to redefine the assessment base used for calculating deposit insurance assessments for all 7,500 insured depository institutions and revise the assessment system for approximately 110 large institutions.<sup>7</sup> This final rule took effect for the quarter beginning April 1, 2011, and was reflected for the first time in the invoices for deposit insurance assessments due September 30, 2011, using data reported in the Call Reports, the TFRs, and the FFIEC 002/002S reports for June 30, 2011.

The FDIC further notes that the definitions of subprime loans, leveraged loans, and nontraditional mortgage loans in its February 2011 final rule (the FDIC assessment definitions) are applicable only for purposes of deposit insurance assessments. The FDIC assessment definitions are not identical to the definitions included in existing supervisory guidance pertaining to these types of loans.<sup>8</sup> Rather, the FDIC assessment definitions are more prescriptive and less subjective than those contained in the applicable supervisory guidance. The final rule includes prescriptive definitions to ensure that large and highly complex institutions apply a uniform and consistent approach to the identification of loans to be reported as higher-risk

assets for assessment purposes and to be used as inputs to the scorecards that determine these institutions' initial base assessment rates.

Given the specific and limited purpose for which the definitions of subprime loans, leveraged loans, and nontraditional mortgage loans in the FDIC's final rule on assessments will be used, these definitions will not be applied for supervisory purposes. Therefore, the definitions of these three types of loans in the FDIC's final rule on assessments do not override or supersede any existing interagency or individual agency guidance and interpretations pertaining to subprime lending, leveraged loans, and nontraditional mortgage loans that have been issued for supervisory purposes or for any other purpose other than deposit insurance assessments. In this regard, the addition of data items to the Call Report and TFR deposit insurance assessment schedules for these three higher-risk asset categories, the definitions for which are taken directly from the FDIC's final rule (subject to the transition guidance discussed below), represents the outcome of decisions by the FDIC in its assessment rulemaking process rather than a collective decision of the agencies through interagency supervisory policy development activities.

On March 16, 2011, the agencies published an initial PRA **Federal Register** notice under normal PRA clearance procedures in which they requested comment on proposed revisions to the Call Report, the TFR, and the FFIEC 002/002S reports that would provide the data needed by the FDIC to implement the provisions of its February 2011 final rule beginning with the June 30, 2011, report date.<sup>9</sup> Thus, the assessment-related reporting changes were designed to enable the FDIC to calculate (1) The assessment bases for insured depository institutions as redefined in accordance with section 331(b) of the Dodd-Frank Act and the FDIC's final rule, and (2) the assessment rates for "large institutions" and "highly complex institutions" using a scorecard set forth in the final rule that combines CAMELS ratings and certain forward-looking financial measures to assess the risk such institutions pose to the Deposit Insurance Fund (DIF). The new data items proposed in the March 2011 initial PRA notice were linked to specific requirements in the FDIC's assessment regulations as amended by the final rule. The draft instructions for

<sup>4</sup> See 75 FR 23516, May 3, 2010, at <http://www.fdic.gov/regulations/laws/federal/2010/10proposeAD66.pdf>.

<sup>5</sup> See 75 FR 72582, November 24, 2010, at <http://www.fdic.gov/regulations/laws/federal/2010/10proposeAD66.pdf>.

<sup>6</sup> See 75 FR 72612, November 24, 2010, at <http://www.fdic.gov/regulations/laws/federal/2010/10proposeAD66LargeBank.pdf>.

<sup>7</sup> See 76 FR 10672, February 25, 2011, at <http://www.fdic.gov/regulations/laws/federal/2011/11FinalFeb25.pdf>.

<sup>8</sup> Interagency Expanded Guidance for Subprime Lending Programs, issued in January 2001 (<http://www.fdic.gov/news/news/press/2001/pr0901a.html>); Comptroller's Handbook: Leveraged Loans, issued in February 2008 (<http://www.occ.gov/static/publications/handbook/leveragedlending.pdf>); and Interagency Guidance on Nontraditional Mortgage Product Risks, issued in October 2006 (<http://www.fdic.gov/regulations/laws/federal/2006/06NoticeFINAL.html>).

<sup>9</sup> See 76 FR 14460, March 16, 2011, at <http://www.fdic.gov/regulations/laws/federal/2011/11noticeMar16.pdf>.

these proposed new items incorporated the definitions in, and other provisions of, the FDIC's amended assessment regulations. For a detailed discussion of the proposed reporting revisions associated with the redefined deposit insurance assessment base, see pages 14463–14465 of the agencies' March 2011 initial PRA notice.<sup>10</sup> For a detailed discussion of the proposed reporting revisions associated with the revised large institutions assessment system, see pages 14466–14470 of the agencies' March 2011 initial PRA notice.<sup>11</sup>

The FDIC did not anticipate receiving material comments on the reporting changes proposed in the March 2011 initial PRA notice because the FDIC's February 2011 final rule on assessments had taken into account the comments received on the two November 2010 NPRs as well as the earlier May 2010 NPR. Thus, the agencies expected to continue following normal PRA clearance procedures and publish a final PRA **Federal Register** notice for the proposed reporting changes and submit these changes to OMB for review soon after the close of the comment period for the initial PRA notice on May 16, 2011.

The agencies collectively received comments from 19 respondents on their initial PRA notice on the proposed assessment-related reporting changes published on March 16, 2011. Comments were received from fourteen depository institutions, four bankers' organizations, and one government agency. Three of the bankers' organizations commented on certain aspects of the proposed reporting requirements associated with the redefined assessment base, with one of these organizations welcoming the proposed reporting changes and deeming them "reasonable and practical." Seventeen of the 19 respondents (all of the depository institutions and three of the bankers' organizations) addressed the reporting requirements proposed for large institutions, with specific concerns raised by all 17 about the definitions of subprime consumer loans and leveraged loans in the FDIC's final rule, which were carried directly into the draft reporting instructions for these two proposed data items.<sup>12</sup> Concerns were also expressed regarding large institutions' ability to report the amount of subprime consumer loans and

leveraged loans in accordance with the final rule's definitions, particularly beginning as of the June 30, 2011, report date. More specifically, these commenters stated that institutions generally do not maintain data on these loans in the manner in which these two loan categories are defined for assessment purposes in the FDIC's final rule or do not have the ability to capture the prescribed data to enable them to identify these loans in time to file their regulatory reports for the June 30, 2011, report date. These data availability concerns, particularly as they related to institutions' existing loan portfolios, had not been raised as an issue during the rulemaking process for the revised large institution assessment system, which included the FDIC's publication of two NPRs in 2010.<sup>13</sup> Nevertheless, a number of respondents expressed support for the concept of applying risk-based evaluation tools in the determination of deposit insurance assessments, which is an objective of the large institution assessment system under the FDIC's final rule.

For a detailed discussion of the comments received on the reporting revisions associated with the redefined deposit insurance assessment base proposed in the agencies' March 2011 initial PRA notice, the agencies' evaluation of these comments, and the modifications that the agencies made to the March 2011 reporting proposal in response to these comments, see pages 44994–44996 of the agencies' second initial PRA notice for the assessment-related reporting changes, which was published on July 27, 2011.<sup>14</sup> For a detailed discussion of the comments received on the reporting revisions

associated with the revised large institutions assessment system proposed in the agencies' March 2011 initial PRA notice, the agencies' evaluation of these comments, and the modifications that the agencies made to the March 2011 reporting proposal in response to these comments, see pages 44998–45003 of the agencies' second initial PRA notice for the assessment-related reporting changes, which was published on July 27, 2011.<sup>15</sup>

The unanticipated outcome of the public comment process for the agencies' March 2011 initial PRA notice required the FDIC to consider possible reporting approaches that would address institutions' concerns about their ability to identify loans meeting the subprime and leveraged loan definitions in the FDIC's assessments final rule while also meeting the objectives of the revised large institution assessment system. Accordingly, in recognition of these concerns, the agencies decided to provide transition guidance for reporting subprime consumer and leveraged loans originated or purchased prior to October 1, 2011, and securities where the underlying loans were originated predominantly prior to October 1, 2011. However, as a consequence of the unexpected need to develop and reach agreement on a workable transition approach for loans that are to be reported as subprime or leveraged for assessment purposes,<sup>16</sup> the agencies concluded that they should follow emergency rather than normal PRA clearance procedures to request approval from OMB for the assessment-related reporting changes to the Call Report, the TFR, and the FFIEC 002/002S reports. The use of emergency clearance procedures was intended to provide certainty to institutions on a timely basis concerning the initial collection of the new assessment data items as of the June 30, 2011, report date as called for under the FDIC's final rule.

The transition guidance for reporting subprime and leveraged loans was an integral part of the agencies' emergency clearance requests that were submitted to OMB on June 16, 2011. This guidance, as originally promulgated in June 2011, provides that for pre-October 1, 2011, loans and securities, if a large or highly complex institution does not

<sup>10</sup> See 76 FR 14463–14465, March 16, 2011, at <http://www.fdic.gov/regulations/laws/federal/2011/11noticeMar16.pdf>.

<sup>11</sup> See 76 FR 14466–14470, March 16, 2011, at <http://www.fdic.gov/regulations/laws/federal/2011/11noticeMar16.pdf>.

<sup>12</sup> In contrast, only four respondents commented on other aspects of the overall reporting proposal.

<sup>13</sup> In response to the November 2010 NPR on the revised large institution assessment system, the FDIC received a number of comments recommending changes to the definitions of subprime and leveraged loans, which the FDIC addressed in its February 2011 final rule amending its assessment regulations. For example, several commenters on the November 2010 NPR indicated that regular (quarterly) updating of data to evaluate loans for subprime or leveraged status would be burdensome and costly and, for certain types of retail loans, would not be possible because existing loan agreements do not require borrowers to routinely provide updated financial information. In response to these comments, the FDIC's February 2011 final rule stated that large institutions should evaluate loans for subprime or leveraged status upon origination, refinance, or renewal. However, no comments were received on the November 2010 NPR indicating that large institutions would not be able to identify and report subprime or leveraged loans in accordance with the definitions proposed for assessment purposes in their Call Reports and TFRs beginning as of June 30, 2011. These data availability concerns were first expressed in comments on the March 2011 initial PRA notice.

<sup>14</sup> See 76 FR 44994–44996, July 27, 2011, at <http://www.fdic.gov/regulations/laws/federal/2011/11noticejuly27no3.pdf>.

<sup>15</sup> See 76 FR 44998–45003, July 27, 2011, at <http://www.fdic.gov/regulations/laws/federal/2011/11noticejuly27no3.pdf>.

<sup>16</sup> The FDIC presented this transition approach to large institutions during a conference call on June 7, 2011, that all large institutions had been invited to attend. Several institutions offered favorable comments about the transition approach during this call.

have within its data systems the information necessary to determine subprime consumer or leveraged loan status in accordance with the definitions of these two higher-risk asset categories set forth in the FDIC's final rule, the institution may use its existing internal methodology for identifying subprime consumer or leveraged loans and securities as the basis for reporting these assets for deposit insurance assessment purposes in its Call Reports or TFRs. Institutions that do not have an existing internal methodology in place to identify subprime consumer or leveraged loans<sup>17</sup> may, as an alternative to applying the definitions in the FDIC's final rule to pre-October 1, 2011, loans and securities, apply existing guidance provided by their primary federal regulator, the agencies' 2001 Expanded Guidance for Subprime Lending Programs,<sup>18</sup> or the February 2008 Comptroller's Handbook on Leveraged Lending<sup>19</sup> for identification purposes. Under the agencies' transition guidance as originally issued in June 2011, all loans originated on or after October 1, 2011, and all securities where the underlying loans were originated predominantly on or after October 1, 2011, were to be reported as subprime consumer or leveraged loans and securities according to the definitions of these higher-risk asset categories set forth in the FDIC's final rule.<sup>20</sup>

On June 17, 2011, OMB approved the agencies' emergency clearance requests to implement the assessment-related reporting revisions to the Call Report, the TFR, and the FFIEC 002/002S reports effective as of the June 30, 2011, report date. OMB's emergency approval extends through the December 31, 2011, report date. Because the assessment-related reporting revisions need to remain in effect beyond the limited approval period associated with an emergency clearance request, the agencies, under the auspices of the

<sup>17</sup> A large or highly complex institution may not have an existing internal methodology in place because it is not required to report on these exposures to its primary federal regulator for examination or other supervisory purposes or did not measure and monitor loans and securities with these characteristics for internal risk management purposes.

<sup>18</sup> <http://www.fdic.gov/news/news/press/2001/pr0901a.html>.

<sup>19</sup> <http://www.occ.gov/static/publications/handbook/LeveragedLending.pdf>.

<sup>20</sup> For loans purchased on or after October 1, 2011, large and highly complex institutions may apply the transition guidance to loans originated prior to that date. Loans purchased on or after October 1, 2011, that also were originated on or after that date must be reported as subprime or leveraged according to the definitions of these higher-risk asset categories set forth in the FDIC's final rule.

FFIEC, began normal PRA clearance procedures anew with the publication of a second initial PRA **Federal Register** notice on July 27, 2011 (76 FR 44987). This second initial notice requested public comment on the assessment-related reporting revisions to the Call Report, the TFR, and the FFIEC 002/002S reports that had taken effect June 30, 2011, under OMB's emergency approval, including the transition guidance and the other modifications the agencies had made in response to the comments received on the revisions first proposed in March 2011.

After the publication of the agencies' second initial PRA notice on July 27, 2011, OMB approved the agencies' separate requests that savings associations begin to file the Call Report beginning with the reports for March 31, 2012. As a result, December 31, 2011, is the final report date as of which the TFR will be collected from savings associations. Because OMB's emergency approval of the assessment-related reporting revisions that were implemented as of the June 30, 2011, report date extends through the December 31, 2011, report date (after which the TFR will no longer be collected), this notice and the agencies' related submissions to OMB requesting approval to revise and extend for three years the Call Report and the FFIEC 002/002S report do not request this same approval for the TFR. For information on the conversion by savings associations from filing the TFR to filing the Call Report, see the agencies' final PRA notice published July 7, 2011.<sup>21</sup>

## *II. Comments Received on the July 2011 Second Initial PRA Federal Register Notice and the Agencies' Response to the Comments*

The agencies collectively received comments from eight respondents on their July 27, 2011, second initial PRA notice on the assessment-related reporting revisions to the Call Report, the TFR, and the FFIEC 002/002S reports that had taken effect June 30, 2011, under OMB's emergency approval. Comments were received from four depository institutions, all of which are "large institutions" for deposit insurance assessment purposes, and four bankers' organizations, three of which submitted a joint comment letter.<sup>22</sup> The jointly commenting

<sup>21</sup> See 76 FR 39981, July 7, 2011, <http://www.fdic.gov/regulations/laws/federal/2011/11noticejuly07.pdf>.

<sup>22</sup> The American Bankers Association (ABA), The Clearing House, and the Financial Services Roundtable jointly commented. The Risk

bankers' organizations stated they "collectively represent all of the banks that are affected or may be affected by" the revised assessment system for "large institutions" and "highly complex institutions" in the FDIC's February 2011 final rule on assessments. Six of the eight respondents on the second initial PRA notice focused their comments on the definitions of subprime consumer and leveraged loans in the FDIC's assessments final rule, which (subject to the transition guidance for reporting such assets described above) are the basis for the regulatory reporting instructions for reporting the amounts of these two categories of higher-risk assets for assessment purposes in the Call Report and (through the December 31, 2011, report date) the TFR. In addition, as noted in the public comment file for the second initial PRA notice, representatives of the four commenting bankers' organizations and certain large and highly complex institutions met twice with FDIC staff prior to the close of the comment period for the notice to explain their concerns about the definitions of, and the availability of the information necessary to report, subprime and leveraged loans by such institutions.

Comments also were received on the definition of nontraditional 1–4 family residential mortgage loans, the reporting of counterparty exposures by highly complex institutions, the frequency of loan loss provision and deferred tax calculations for reporting average tangible equity, the treatment of prepaid deposit insurance assessments in the measurement of average total assets for assessment base purposes, and the reporting of certain troubled debt restructurings that are guaranteed or insured by the U.S. Government. In addition, during the initial reporting of the revised assessment-related data items as of June 30, 2011, questions arose about which data items should be reported on a consolidated or an unconsolidated single FDIC certificate number basis by institutions that own another insured institution as a subsidiary because of the way in which these data are used in the FDIC's risk-based deposit insurance system.

These issues are discussed in Sections II.A through II.G below.

**A. Definitions of Subprime and Leveraged Loans and Securities**—Two new data items for subprime consumer and leveraged loans and securities were among the assessment-related reporting revisions applicable to large and highly

Management Association submitted a separate comment letter.

complex institutions that were included in OMB's approval of the agencies' emergency clearance requests and implemented in the Call Report and the TFR as of the June 30, 2011, report date. These two data items are used as inputs to the scorecard measures for large and highly complex institutions in the revised risk-based assessment system for such institutions brought about by the FDIC's February 2011 assessments final rule.

In their comments on the agencies' second initial PRA notice, the four bankers' organizations and two institutions requested that the definitions of subprime and leveraged loans in the FDIC's assessments final rule be revised, asserting that the definitions do not effectively capture the risk that the FDIC desires or needs for its large bank deposit insurance pricing model. Rather, these commenters stated that the final rule's current definitions would capture loans that are not subprime or leveraged (*i.e.*, are not higher-risk), would entail excessive reporting that would often be inconsistent across institutions, would greatly overstate institutions' actual risk exposures, and would produce a biased representation of relative risk (resulting in institutions with less risky portfolios being treated the same as institutions with more risky portfolios). The bankers' organizations, in their two comment letters, proposed "consensus solutions" for modifying the definitions of subprime and leveraged loans that would better correspond to industry standards and practices for such loans, better differentiate risk among large institutions, and thereby simplify and reduce the cost of the regulatory reporting process for such loans. The two institutions that addressed these definitions offered similar recommendations.

The three jointly commenting bankers' organizations stated that having the "right definitions" is so important that it is imperative for the FDIC to revise its assessments final rule,<sup>23</sup> but they also observed that revising the rule "cannot be done instantaneously." Accordingly, these organizations as well as one institution recommended extending the transition approach for reporting subprime and leveraged loans and securities (which was summarized above and was scheduled to end on October 1, 2011) until more workable and accurate definitions are developed. The same commenters also noted that if the FDIC

decides not to make changes to the assessments final rule's definitions of subprime and leveraged loans and securities, large and highly complex institutions will need until at least the second quarter of 2012 to build reliable systems for identifying such loans and securities and to train staff to input reliable data. According to these commenters, the additional preparation time that institutions would need if the definitions are not revised would also justify an extension of the transition reporting approach.

The FDIC has decided to review the definitions of subprime and leveraged loans and securities in the February 2011 assessments final rule to determine whether changes to the definitions could alleviate industry concerns without sacrificing accuracy in risk differentiation for deposit insurance pricing purposes. To allow sufficient time for the FDIC to undertake this review, and—in the event that the FDIC does not propose to alter the definitions in the February 2011 assessments final rule following this review—to give large and highly complex institutions additional time to adapt reporting systems to the definitions in the rule, the FDIC has also decided to allow such institutions to continue to follow the transition approach under which they may use either their existing internal methodologies or existing supervisory guidance to identify and report, for assessment purposes, subprime and leveraged loans originated or purchased prior to April 1, 2012. Thus, by extending the previous transition guidance for these two loan categories, the February 2011 assessment definitions—if left unaltered—would begin to apply to loans originated on or after April 1, 2012.

Any revised definitions of subprime and leveraged loans for assessment purposes would require approval by the FDIC Board of Directors through the notice and comment rulemaking process. The effective date for applying any revised definitions would be communicated through the rulemaking process and would be subject to comment by the industry.

The FDIC communicated these decisions in an email it sent to all large and highly complex institutions on September 28, 2011. In addition, the Call Report and TFR instructions were updated as of September 30, 2011, to reflect the extension of the transition guidance for reporting subprime and leveraged loans and securities from October 1, 2011, to April 1, 2012.

At present, the instructions for reporting subprime and leveraged loans and securities in the Call Report and the

TFR (until the collection of the TFR is discontinued after the filing of the year-end 2011 reports) specifically reference the definitions of these high-risk asset categories that are contained in the FDIC's assessment regulations (12 CFR part 327) as amended by the FDIC's February 2011 final rule and then incorporate the text of these definitions from the final rule (as well as the previously mentioned transition guidance). Accordingly, if and when one or both of these two definitions—as used for assessment purposes—are revised through FDIC rulemaking, the definitions of these asset categories in the agencies' regulatory reporting instructions will be revised in the same manner to maintain conformity with the assessment regulations.

*B. Nontraditional 1–4 Family Residential Mortgage Loans*—The assessment-related reporting revisions applicable to large and highly complex institutions that were included in OMB's approval of the agencies' emergency clearance requests and implemented as of June 30, 2011, also included a new data item for nontraditional 1–4 family residential mortgage loans and certain securitizations of such loans. Like the new data items for subprime and leveraged loans, the new nontraditional mortgage loan data item is an input to the scorecard measures for large and highly complex institutions in the FDIC's revised risk-based assessment system for such institutions.

The three jointly commenting bankers' organizations stated that the reporting of nontraditional residential mortgage loans based on the definition in the FDIC's assessments final rule "does not distinguish risk between banks or within the population being reported." These bankers' organizations recommended that their proposed consensus solution for identifying which consumer loans should be reported as subprime loans also be applied to nontraditional residential mortgage loans.<sup>24</sup> According to these organizations, taking this approach would enable the agencies to eliminate the separate data item for nontraditional residential mortgage loans because those mortgage loans meeting the criteria in the organizations' recommended consensus solution could be reported

<sup>23</sup> Although the comment letter from the other bankers' organization did not specifically discuss nontraditional residential mortgage loans, the agencies note that the demonstration matrix provided in support of the organization's recommended consensus solution for identifying subprime loans included a column for nontraditional mortgages.

<sup>24</sup> The other bankers' organization requested that the FDIC reopen discussions on the subprime and leveraged loan definitions.

with the consumer loans being reported as subprime.

The agencies note that the nature, extent, and level of concern about the definitions of subprime and leveraged loans and related data availability issues that bankers and bankers' organizations cited in their comments on the agencies' March 2011 first initial PRA notice, which led the FDIC to devise transition guidance for the reporting of these two categories of higher-risk assets, were not also expressed with respect to the definition and reporting on nontraditional mortgage loans.<sup>25</sup> As a consequence, the reporting of the new data item for nontraditional mortgage loans using the definition in the FDIC's assessments final rule was not subject to the transition guidance provided for subprime and leveraged loans. Therefore, after considering the bankers' organizations comments about nontraditional residential mortgage loans, the definition of this high-risk asset category will remain as defined in the FDIC's assessments final rule unless the results of the FDIC's review of the subprime and leveraged loan definitions (discussed above) also indicate that it would be appropriate for the FDIC to amend the definition of nontraditional residential mortgage loans through rulemaking. Should that occur, the definition of high risk residential mortgage loans in the agencies' regulatory reporting instructions will be revised in the same manner to maintain conformity with the FDIC's assessment regulations.

*C. Counterparty Exposures*—The assessment-related reporting revisions that took effect June 30, 2011, pursuant to OMB's approval of the agencies' emergency clearance request included two new Call Report data items applicable only to highly complex institutions for the total amount of an institution's 20 largest counterparty exposures and the amount of the institution's largest counterparty exposure. As with the other new data items that are inputs to the revised assessment system for large and highly complex institutions, the Call Report instructions explaining the scope and

measurement of the two counterparty exposure items are drawn from the definitional guidance on counterparty exposures in the FDIC's February 2011 assessments final rule.

The final rule's definition of counterparty exposure states that exposure should be measured for each counterparty or borrower at the consolidated entity level. The three jointly commenting bankers' organizations recommended that the term "legal consolidated entity," as used in this definition in relation to a counterparty, should be clarified, but they also noted that an outstanding Office of Financial Research proposal is considering the creation of unique identifiers for derivative counterparties, thereby "demonstrating regulatory recognition of unanswered questions on consolidating counterparty exposures." Given the absence of an industry standard for recognizing connections between counterparties and the regulatory uncertainty in this area, the three bankers' organizations asserted that this reporting requirement is not appropriate at present.

The three jointly commenting bankers' organizations also stated that there is an inconsistency between the counterparty credit risk data the FDIC used to calibrate the assessment pricing model for highly complex institutions in its final rule and the counterparty exposure data these institutions are required to report in the Call Report. The organizations stated that the model was calibrated using Exposure at Default (EAD) data reported in the FFIEC 101 reports<sup>26</sup> of institutions going through their Basel II parallel runs as opposed to the data that highly complex institutions are asked to submit on their Call Reports for deposit insurance assessment pricing purposes. The organizations recommended that the FDIC review the counterparty credit exposure that highly complex institutions report in their Call Reports in accordance with the guidance provided in the assessments final rule, compare this to the counterparty credit exposure the institutions report in their FFIEC 101 reports, and then consider whether the pricing model should be recalibrated based upon the FDIC's findings. These commenters further requested that the FDIC accept the results of a highly complex institution's Internal Models Methodology (IMM) for deposit insurance assessment pricing purposes only, prior to its exit from its

parallel run, provided the IMM models are acceptable. Finally, these commenters recommended that once an institution's IMM model is approved, the institution should be allowed to amend the amounts previously reported on its Call Reports for counterparty EADs and the FDIC should use these amended amounts to retroactively adjust the institution's assessments for those previous periods.

The FDIC continues to believe that, for the purposes of calculating deposit insurance premiums, highly complex institutions should report counterparty credit exposure on a consolidated entity basis (legal consolidated entity). The FDIC believes that highly complex institutions should have the ability to aggregate exposures arising from financial contracts with entities within a legal consolidated entity and report the exposure as outlined in the final rule. Although the Office of Financial Research's November 2010 Statement on Legal Entity Identification for Financial Contracts addresses the establishment of a system to uniquely identify all market participants, which would enable institutions to better aggregate counterparty exposures, the main goal of the proposal is to standardize the system and allow for better oversight, tracking, monitoring, and enforcement. The absence of such a system does not preclude institutions from internally aggregating their exposures to entities within a legal consolidated entity.

The FDIC is reviewing the claim that there is an inconsistency between the counterparty credit risk data used to calibrate the model and the data required to be provided in the Call Report under the final rule. The FDIC has asked highly complex institutions to voluntarily submit counterparty credit risk data to the FDIC that has been measured under the institutions' IMMs for comparison with the data reported in the Call Report. The FDIC will review these data and consider the need for appropriate changes to the pricing model to ensure that it differentiates risk, including consideration of the effect on prior periods. In the interim, institutions should continue to report counterparty exposures in the Call Report using the final rule's existing definition. Additionally, the FDIC continues to believe that it is not appropriate for pricing purposes to use data calculated via an institution's IMM model before the IMM model has been approved and the bank has exited its parallel run period. To adopt the IMM to calculate EADs for purposes of the risk-based capital requirements under the Advanced Capital Adequacy Framework, institutions must first

<sup>25</sup> However, commenters on the agencies' March 2011 first initial PRA notice did request certain clarifications of the scope of the nontraditional mortgage loan data item. As mentioned in the agencies' July 2011 second initial PRA notice, in response to these comments, the agencies agreed that certain clarifications of the final rule's nontraditional mortgage loan definition would be appropriate to assist institutions in properly reporting the amount of such loans in the Call Report and TFR. These clarifications were incorporated into the instructions for reporting nontraditional mortgage loans that were issued and took effect for the June 30, 2011, report date.

<sup>26</sup> Risk-Based Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework, OMB Nos.: Board, 7100-0319; FDIC, 3064-0159; and OCC, 1557-0239.

receive approval from their primary federal regulator to exit the parallel run period. Institutions also must receive approval from their primary federal regulator to use their IMMs. Once an institution has conducted a satisfactory parallel run and satisfied the approval requirements for the IMM, the IMM results should be used to report counterparty exposure data in the Call Report for deposit insurance pricing purposes.

*D. Frequency of Loan Loss Provision and Deferred Tax Calculations for Reporting Average Tangible Equity*—As required by section 331(b) of the Dodd-Frank Act, the FDIC's assessments final rule redefines the deposit insurance assessment base as average consolidated total assets minus average tangible equity. Under the final rule, tangible equity is defined as Tier 1 capital.<sup>27</sup> As one of the assessment-related reporting revisions applicable to all institutions that was included in OMB's approval of the agencies' emergency clearance requests and implemented in the Call Report, the TFR, and the FFIEC 002 report as of June 30, 2011, the agencies added a new data item for average tangible equity. The final rule requires average tangible equity to be calculated on a monthly average basis by institutions with \$1 billion or more in total assets, all newly insured institutions, and institutions with less than \$1 billion in total assets that elect to do so. For all other institutions, “average” tangible equity is based on quarter-end Tier 1 capital.

The three jointly commenting bankers' organizations and one institution stated that the requirement for certain institutions to estimate month-end Tier 1 capital numbers prior to quarter-end is problematic because they do not calculate their provision for loan and lease losses expense and deferred taxes on a monthly basis, which are two potentially significant drivers of Tier 1 capital. These commenters recommended that, for purposes of measuring average tangible equity on a monthly average basis, institutions that do not perform monthly loan loss provision or deferred tax calculations be allowed to use a “pro-rated, one-third estimate of the quarter-end reported” provision and deferred tax amounts for months other than quarter-end. These commenters argued that institutions are not required to

update these calculations monthly in accordance with generally accepted accounting principles for external reporting purposes and the cost of doing so would outweigh the benefits.

The agencies believe the commenters' suggested approach has merit as a means to reduce institutions' compliance costs. Accordingly, for institutions required or electing to report average tangible equity on a monthly average basis that do not perform monthly loan loss provision or deferred tax calculations, the agencies will permit such institutions to use one third of the amount of provision for loan and lease losses and deferred tax expense (benefit) reported for the quarterly regulatory reporting period for purposes of estimating the retained earnings component of Tier 1 capital in each of the first two months of the quarter. As suggested by the institution commenting on this issue, the agencies will revise the instructions for the data item for average tangible equity to describe this permissible approach.

For example, if the reported amount of the provision expense for the quarterly reporting period for an institution applying this approach is \$3 million, then the institution would include a \$1 million provision expense as an adjustment to its earnings when measuring its tangible equity for assessment purposes in each of the first two months of the quarter. Similarly, if the reported amount of the institution's deferred tax expense (benefit) for the quarterly reporting period is a benefit of \$900,000, then the institution would include a \$300,000 deferred tax benefit as an earnings adjustment for assessment purposes in each of the first two months of the quarter. By making these adjustments, the institution's retained earnings component of Tier 1 capital for monthly average tangible equity calculation purposes would be \$700,000 and \$1.4 million less than its internally reported retained earnings at the end of the first and second months of the quarterly reporting period, respectively. In addition, the agencies remind institutions that the measurement of Tier 1 capital includes a limit on deferred tax assets, with the amount in excess of the limit deducted from Tier 1 capital. Thus, the month-end pro-rated amounts of an institution's reported amount of deferred tax expense (benefit) for the quarterly reporting period also should be taken into account when determining the amount of the institution's deferred tax assets (liabilities) and, hence, the amount of disallowed deferred tax assets, if any, at the end of each of the first two months of the quarter for

monthly average tangible equity calculation purposes.

*E. Prepaid Deposit Insurance Assessments*—The three jointly commenting bankers' organizations requested that prepaid deposit insurance assessments, which institutions include in the total assets reported on their balance sheets, should not be included in the redefined assessment base. These commenters argued that there is no justification for charging deposit insurance premiums on funds that institutions were forced to give the FDIC as interest-free loans. These commenters recommended that if the FDIC believes it is required by law to include prepaid assessments in the assessment base, then “this asset should be allowed a zero risk-weighting in the risk-based premiums formula.”

Section 331(b) of the Dodd-Frank Act explicitly states that an institution's assessment base is average consolidated total assets minus average tangible equity. Because prepaid assessments are included in the assets of an institution, this asset amount must be included in the assessment base. In addition, the risk-weightings that apply to assets for risk-based capital purposes under the agencies' regulatory capital standards are not used when calculating the assessment base for deposit insurance assessment purposes.

*F. Troubled Debt Restructurings Guaranteed or Insured by the U.S. Government*—Under the FDIC's February 2011 final rule, assessment rates for large and highly complex institutions are calculated using scorecards that combine CAMELS ratings and certain forward-looking financial measures to assess the risk such an institution poses to the Deposit Insurance Fund. The Credit Quality Measure for large and highly complex institutions includes a score for “Underperforming Assets/Tier 1 Capital and Reserves.” For purposes of this score, “Underperforming Assets” includes:

loans that are 30 days or more past due and still accruing interest, nonaccrual loans, restructured loans (including restructured 1–4 family loans), and ORE, excluding the maximum amount recoverable from the U.S. Government, its agencies, or government-sponsored agencies, under guarantee or insurance provisions.”<sup>28</sup>

Two institutions commented that the Call Report and TFR do not collect all of the data necessary to correctly measure “Underperforming Assets.”

<sup>27</sup> For an insured branch, tangible equity would be defined as eligible assets (determined in accordance with section 347.210 of the FDIC's regulations) less the book value of liabilities (exclusive of liabilities due to the foreign bank's head office, other branches, agencies, offices, or wholly owned subsidiaries).

<sup>28</sup> See Appendix A to Subpart A of part 327—Description of Scorecard Measures in the FDIC's assessments final rule, 76 FR 10721, at <http://www.fdic.gov/regulations/laws/federal/2011/11FinalFeb25.pdf>.

More specifically, although institutions report the amount of loans restructured in troubled debt restructurings that are in compliance with their modified terms (*i.e.*, restructured loans other than those that are 30 days or more past due and still accruing interest or that are in nonaccrual status), the amount of such restructured loans that is recoverable from the U.S. government, including its agencies and its government-sponsored agencies, under guarantee or insurance provisions is not reported. Thus, these institutions stated that the agencies should begin to collect data on recoverable restructured loans so that the underperforming assets ratio can be properly calculated.

The agencies agree that the collection of this information is necessary to accurately calculate a large or highly complex institution's underperforming assets ratio, as defined in the FDIC's assessments final rule, and its total score within the scorecard. Accordingly, the agencies propose to include a new Memorandum item 16 to Call Report Schedule RC-O beginning with the June 30, 2012, report date in which large and highly complex institutions would report the "Portion of loans restructured in troubled debt restructurings that are in compliance with their modified terms and are guaranteed or insured by the U.S. government (including the FDIC)." For quarter-end report dates after the effective date of the FDIC's assessments final rule but prior to the effective date of this Call Report change (*i.e.*, June 30, 2011, through March 31, 2012), large and highly complex institutions that have such restructured loans may choose to, but are not required to, provide this information to the FDIC on a voluntary basis. Large and highly complex institutions interested in submitting this restructured loan information to the FDIC for scorecard purposes for quarter-end dates before the information begins to be collected in the Call Report should send an email to *RRPSAdministrator@FDIC.gov* notifying the FDIC of their interest. The FDIC will provide the institution with an Excel worksheet and instructions that will enable the institution to submit the data to the FDIC in a specific format via *FDICConnect*. For an institution that chooses to submit this prior period information, the FDIC will adjust the institution's total score and corresponding assessments for the affected periods as applicable.

*G. Consolidated or Unconsolidated Single FDIC Certificate Number Reporting*—Before the assessment-related reporting revisions took effect June 30, 2011, the information that institutions reported for assessment

purposes generally consisted of deposit data. Because deposit insurance premiums are assessed separately against each individual insured depository institution, the instructions for reporting assessment data before June 30, 2011, advised institutions to report these data on an unconsolidated single FDIC certificate number basis. If an institution owns another insured institution as a subsidiary, this means that the parent institution must complete the assessment data items by accounting for this subsidiary under the equity method of accounting rather than consolidating the subsidiary. With limited exceptions, all other data items reported in the Call Report and the TFR are reported on a consolidated basis. For the vast majority of institutions that do not own another insured institution as a subsidiary, there is no difference between reporting on a consolidated basis or on unconsolidated single FDIC certificate number basis.

The assessment-related reporting revisions that took effect June 30, 2011, included several new data items applicable to large and highly complex institutions that serve as inputs to the scorecards used to determine the initial base assessment rate for each large institution and highly complex institution under their revised risk-based assessment system. The ratios in these scorecards are calculated on a fully consolidated basis. In addition, for certain small institutions, the initial base assessment rate is determined using the financial ratios method. Like the scorecard ratios, the financial ratios method employs fully consolidated data. Most of the data items used as inputs to the scorecards and financial ratios are collected in other schedules of the Call Report and the TFR on a fully consolidated basis. However, five assessment data items that were collected from all institutions before June 30, 2011, on an unconsolidated single FDIC certificate number basis and continue to be collected also serve as either scorecard or financial ratio inputs.

As a result, during the initial reporting of the revised assessment-related data as of June 30, 2011, questions were raised as to whether the new data items for large and highly complex institutions as well as the five existing, but retained, assessment data items should be reported on a consolidated or an unconsolidated single FDIC certificate number basis. For the large and highly complex institution data items,<sup>29</sup> consolidated reporting is

appropriate and the reporting instructions will be clarified accordingly.

On the other hand, for the five existing assessment data items reported on a single FDIC certificate number basis, among the purposes for which the FDIC has used and continues to use them is to perform industry analyses of the Deposit Insurance Fund, which rely on unconsolidated single FDIC certificate number data consistent with how institutions are insured. However, because these existing items now also enter into scorecard and financial ratio calculations, these five data items are also needed on a consolidated basis from institutions that own another insured depository institution.

Therefore, to resolve this issue for these parent institutions given the inquiries about the appropriate basis of reporting, the agencies will add five items to Call Report Schedule RC-O effective June 30, 2012, one of which would be applicable to all institutions that own another institution while the other four would be completed only by the large and highly complex institutions that own another insured depository institution. More specifically, in new item 9.a of Schedule RC-O, the five institutions that own another institution and have reciprocal brokered deposits would report the fully consolidated amount of reciprocal brokered deposits. In new Memorandum items 17.a through 17.d of Schedule RC-O, the three large and highly complex institutions that own another insured depository institution would report total deposit liabilities before exclusions, total allowable exclusions, unsecured other borrowings with a remaining maturity of one year or less, and estimated amount of uninsured deposits on a fully consolidated basis. For quarter-end report dates after the effective date of the FDIC's assessments final rule but prior to the effective date of these Call Report changes (*i.e.*, June 30, 2011, through March 31, 2012), institutions that own another insured depository institution may choose to, but are not required to, provide the applicable additional fully consolidated information to the FDIC on a voluntary basis. Institutions that own another insured institution and are interested in submitting the applicable additional fully consolidated information to the FDIC for scorecard or financial ratio purposes for quarter-end dates before the information begins to be collected in the Call Report should send an email to *RRPSAdministrator@FDIC.gov* notifying the FDIC of their interest. The FDIC will provide the institution with an Excel

<sup>29</sup>For example, Memorandum items 6 through 15 on Call Report Schedule RC-O.

worksheet and instructions that will enable the institution to submit the data to the FDIC in a specific format via FDICConnect. For an institution that chooses to submit this prior period information, the FDIC will adjust the institution's scorecard or financial ratios and corresponding assessments for the affected periods as applicable.

#### Request for Comment

Public comment is requested on all aspects of this joint notice. Comments are invited on:

(a) Whether the proposed revisions to the collections of information that are the subject of this notice are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this joint notice will be shared among the agencies. All comments will become a matter of public record.

Dated: December 5, 2011.

**Michele Meyer,**

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, December 6, 2011.

**Jennifer J. Johnson,**

Secretary of the Board.

Dated at Washington, DC, this 6th day of December, 2011.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

Executive Secretary.

[FR Doc. 2011-31888 Filed 12-9-11; 8:45 am]

BILLING CODE 4810-33-P; 6210-01-P; 6714-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning miscellaneous sections affected by the Taxpayer Bill of Rights 2 and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. **DATES:** Written comments should be received on or before February 10, 2012 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulation should be directed to Allan Hopkins (202) 622-6665, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224 or through the Internet at [Allan.M.Hopkins@irs.gov](mailto:Allan.M.Hopkins@irs.gov).

#### SUPPLEMENTARY INFORMATION:

**Title:** Miscellaneous Sections Affected by the Taxpayer Bill of Rights 2 and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

**OMB Number:** 1545-1356.

**Regulation Project Number:** REG-248770-96.

**Abstract:** Under Internal Revenue Code section 7430 a prevailing party may recover the reasonable administrative or litigation costs incurred in an administrative or civil proceeding that relates to the determination, collection, or refund of any tax, interest, or penalty. Section 301.7430-2(c) of the regulation provides that the IRS will not award administrative costs under section 7430 unless the taxpayer files a written request in accordance with the requirements of the regulation.

**Current Actions:** There is no change to this existing regulation.

**Type of Review:** Extension of a currently approved collection.

**Affected Public:** Individuals or households, and business or other for-profit organizations, not-for-profit institutions, farms, and the Federal government.

**Estimated Number of Respondents:** 38.

**Estimated Time per Respondent:** 2 hours, 16 minutes.

**Estimated Total Annual Burden Hours:** 86.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments:** Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 2, 2011.

**Yvette Lawrence,**

IRS Reports Clearance Officer.

[FR Doc. 2011-31704 Filed 12-9-11; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Form 13997

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995,